IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.Rev.Pet.No. 3591 of 2007()

CRA.324/2005 of II ADDL. SESSIONS COURT, PALAKKAD
CC.652/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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REVN. PETITIONER: APPELLANTS/ACCUSED 1 AND 2

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1. KANNAN @ DIVAKARAN,
   S/O. NARAYANAN,THATHANADAM,
   CHELLUPADI,MUDAPPALLUR,
   ALATHUR TALUK,PALAKKAD.

2. RAJAPPAN,
   S/O. NARAYANAN,THATHANADAM,
   CHELLUPADI,MUDAPPALLUR,
   ALATHUR TALUK,PALAKKAD.

BY ADV. SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS: COMPLAINANT

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3591 OF 2007

Dated this the 5th day of October, 2007

O R D E R

The revision petitioners, who are brothers, were accused Nos.1 and 2 in C.C.No.652/2001 on the file of the JFCM, Alathur. They challenge the conviction entered and the sentence passed against them by the courts below for offences punishable under sections 341 and 326 read with section 34 IPC.

2. The case of the prosecution can be summarised as follows:-

On 3.2.01 at about 6.15 a.m. at a place called Challuvadi the two accused persons in furtherance of their common intention to voluntarily cause hurt to PW3(mother-in-law of A1) and to PW4(another daughter-in-law of PW3) committed offences punishable under sections 341, 323, 324 and 326 read with section 34 IPC by wrongfully restraining PW3 and hitting her with a wooden stick causing injuries including a fracture to her left leg and minor injuries to PW4.

3. On the side of the prosecution, 10 witnesses were examined as PWs 1 to 10 and 5 documents were got marked as Exts.P1 to P5 and one material object was marked as MO1(wooden stick).

4. After the close of the prosecution evidence, the accused were examined under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They submitted that they were falsely implicated out of family enimity. They did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 29.7.05 acquitted the revision petitioners of the offences punishable under sections 323 and 324 IPC but found them guilty of the offences punishable under sections 341 and 326 read with section 34 IPC. For the conviction under section 341 IPC, each of them was sentenced to simple imprisonment for one month and for the conviction under section 326 IPC, each of them was sentenced to rigorous imprisonment for three years. On appeal preferred by the revision petitioners as Crl.Appeal No.324/05 before the Sessions Court, Palakkad, the II Additional Sessions Judge as per judgment dated 19.7.07 confirmed the conviction as well as the sentence in respect of section 341 IPC but in respect of section 326 IPC the imprisonment was reduced to one year. It is the said judgment which is assailed in this revision.

6. Eventhough the learned counsel appearing for the revision petitioners assailed the conviction entered against the revision petitioners, in as much as the conviction has been entered after a

careful evaluation of the oral and documentary evidence in the case, this court, sitting in the revisional jurisdiction, will be loathe to interfere with the conviction recorded against the revision petitioners. The conviction is accordingly confirmed.

7. What now survives for consideration is the question of adequacy of sentence imposed on the revision petitioners. The parties are near relatives in the sense that A1 is the son-in-law of PW3 and A2 is the brother of A1. The occurrence took place in front of the house of A1. The enimity between the parties is founded on the estrangement between A1 and his wife. Having regard to the close relationship between the parties and also having regard to the further fact that there has since been a rapproachment between A1 and his wife, I do not think that the revision petitioners deserve penal servitude by way of incarceration for the conviction recorded as above. I am of the view that a direction to suffer imprisonment till the rising of the court and an appropriate compensation shall meet the ends of justice. Accordingly, the sentence imposed on the revision petitioners is set aside and instead, for the conviction under section 341 IPC, each of them is sentenced to a fine of Rs.500/- (Rupees five hundred only) and on default to pay the fine, to suffer simple imprisonment for ten days. For the conviction under section 326 IPC, each of the revision petitioners shall undergo imprisonment till the rising of the court and shall also pay

a sum of Rs.7,500/- (Rupees seven thousand and five hundred only) each by way of compensation. From out of the compensation amount, a sum of Rs.12,000/- (Rupees twelve thousand only) shall be paid to PW3 and a sum of Rs.3,000/- (Rupees three thousand only) shall be paid to PW4 under section 357(3) Cr.P.C. The fine as well as the compensation amount shall be deposited before the trial court within two months from today. For the default, if any, in depositing the compensation amount, each of the defaulting accused shall undergo simple imprisonment for two months.

This revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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